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# CURRENT LEGISLATION

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CRIMINAL SYNDICALISM.—The criminal law of the American states has in the past known how to deal with incitements to unlawful acts. Thus the common law crime of conspiracy is incorporated in criminal codes generally.<sup>1</sup> Unlawful assembly is everywhere proscribed.<sup>2</sup> Attempt at crime is both at common law and by statute a substantive crime;<sup>3</sup> and at common law solicitation to crime was punishable.<sup>4</sup> The courts are correct in holding that solicitation does not fall within the statutory definition of attempt;<sup>5</sup> but this does not warrant the conclusion that, since solicitation is not specifically adverted to in the codes,<sup>6</sup> it is dispensable under them. Even at common law solicitation was only independently indictable if in itself it involved a breach of the peace or if its object was interference with justice.<sup>7</sup> And such solicitation clearly falls within the code provisions relating to public nuisances.<sup>8</sup>

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<sup>1</sup>It is unlawful for two or more to conspire, *inter alia*, (1) to prevent another from doing any lawful act by force, threat, or interference with property, or (2) to commit an act injurious to public health, trade or commerce, or for the perversion of justice. N. Y. Penal Law (Consol. Laws c. 39, Laws 1909 c. 88) § 580; Minn. Gen. Stat., 1913 § 8595; Wash. Rem. Code, 1915, § 2382. The co-operation of workers to obtain advances in wages is commonly excepted specifically, thus protecting activity of the type of the A. F. of L. N. Y. Penal Law § 582; Minn. Gen. Stat., 1913 § 8596; Okla. Rev. Laws, 1910 § 3764.

<sup>2</sup>The assembly of three or more with intent to carry out any purpose in such a manner as to disturb the public peace, or the attempt or threat of any act tending toward an injury to person or property. N. Y. Penal Law § 2092; Wash. Rem. Code, 1915, § 2550.

<sup>3</sup>N. Y. Penal Law § 2. The New York law seems here, as elsewhere, to have been the model for the Western codifiers. See *State v. Taylor* (1906) 47 Ore. 455, 460, 84 Pac. 82.

<sup>4</sup>*Commonwealth v. Flagg* (1883) 135 Mass. 545; see *United States v. Galleanni* (D. C. 1917) 245 Fed. 977.

<sup>5</sup>*Ex parte Floyd* (1908) 7 Cal. App. 588, 95 Pac. 175; *State v. Lampe* (1915) 131 Minn. 65, 154 N. W. 737; *State v. Butler* (1894) 8 Wash. 194, 35 Pac. 1093; but see *State v. George* (1914) 79 Wash. 262, 264, 140 Pac. 337.

<sup>6</sup>The codes usually abolish all common law offenses not specifically defined and punished. Minn. Gen. Stat., 1913 § 8466; see *State v. Shaw* (1888) 39 Minn. 153, 39 N. W. 305.

<sup>7</sup>Wharton, *Criminal Law*, (11th ed.) § 218, who continues: "For we should be forced to admit [otherwise] . . . that the propagandists, even in conversation, of agrarian or communistic theories are liable to criminal prosecutions, and hence the necessary freedom of speech and of the press would be greatly infringed."

<sup>8</sup>Thus Johann Most's writings and speeches, urging the assassination of all officers of state, were punished under N. Y. Penal Law § 43, prohibiting "any act which seriously injures the person or property of another

Yet sixteen states have found these broad provisions against the incitement to crime inadequate to cope with the I. W. W. The legislatures of these states within the past two years have passed acts<sup>9</sup> against "criminal syndicalism".<sup>10</sup> This attractive term is typically defined<sup>11</sup> as: "The doctrine which advocates crime, sabotage ( . . . meaning malicious damage to the property of an employer by an employe) . . . as a means of accomplishing industrial or political ends."<sup>12</sup> By these acts it is made a felony to advocate, justify, or suggest the propriety of "criminal syndicalism" by word or writing; or voluntarily to participate in the assembly or association of two or more people to advocate "criminal syndicalism"; and it is a gross misdemeanor as owner or superintendent of a building, knowingly to permit its use for such assembly; with twenty-five years imprisonment as the maximum penalty. Eighteen states have laws punishing "sabotage"<sup>13</sup> as a substantive crime: the "criminal syndicalism" laws thus definitely deal,

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or which seriously disturbs or endangers the public health or peace . . . for which no other punishment is expressly prescribed." *People v. Most* (1902) 171 N. Y. 423, 64 N. E. 175. Cf. Lord's Oregon Laws, 1909 § 2087; *State v. Nease* (1905) 46 Ore. 433, 80 Pac. 897. Conviction upon such an indictment seems to render nugatory the Criminal Anarchy Law passed in New York upon the assassination of President McKinley (1902) N. Y. Penal Law § 160. To the present time no indictment has ever been brought under that section. On the other hand, speech in opposition to conscription was indicted under Penal Law § 43, *supra*. *People v. Nesin* (1917) 179 App. Div. 869, 167 N. Y. Supp. 49.

<sup>9</sup>Alaska, Laws 1919, c. 6; California, Laws 1919, c. 188, constitutionality affirmed in *Ex parte McDermott* (Cal. 1919) 183 Pac. 437; Hawaii, Laws 1919, act 186; Idaho, Laws 1917, c. 145; Iowa, Laws 1919, c. 382; Michigan, Laws 1919, no. 255; Minnesota, Laws 1917, c. 215; Montana, Laws 1918, special session, c. 7; Nebraska, Laws 1919, c. 261; Nevada, Laws 1919, c. 22; Oklahoma, Laws 1919, c. 70; Oregon, Laws 1919, c. 12; South Dakota, Laws 1918, special session, c. 38; Utah, Laws 1919, c. 127; Washington, Laws 1919, c. 174; Wyoming, Laws 1919, c. 76; cf. Australia, Unlawful Associations Act, No. 41 of 1916, as amended by No. 14 of 1917.

<sup>10</sup>None of the statutes mentions the I. W. W. by name, but there is reference to the "active element within this State . . . determined . . . to overthrow existing . . . economic institutions . . . by organizing all lawless and dissatisfied elements", Oregon, Laws 1919, c. 12 § 5; and "large numbers of persons . . . going from place to place . . . advocating . . . criminal syndicalism", California, Laws 1919, c. 188 § 4.

<sup>11</sup>There is no attempt at scientific use of the phrase. But in fact the I. W. W.'s "relations with the French [syndicalist] movement have not at any time been as close or as definite as is generally imagined. . . . French syndicalism has entered the I. W. W. [only] to give it certain characteristic strike tactics and a set of foggy philosophical concepts". Brissenden, *The I. W. W.* (1919) 272, 274.

<sup>12</sup>Minnesota, Laws 1917, c. 215 § 1. Oregon adds "or revolution . . . or for profit". Laws 1919, c. 12 § 1. California's definition is narrower: ". . . terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change". Laws 1919, c. 188 § 1.

<sup>13</sup>The definition of "sabotage" is no more technically accurate than that of "syndicalism". Of the "sabotage" which the statutes attack, it is well said that "it amounts to malicious mischief and is a crime at common law as well as by statute". *State v. Moilen* (1918) 140 Minn. 112, 167 N. W. 345.

not with the destruction of property, but only with the incitement thereto.

In so far as these laws operate to make conspiracy, unlawful assembly, and solicitation "endangering the public peace" felonies instead of misdemeanors, they add little to the substance of our criminal law. But by the liberal use of the unscientific term "criminal syndicalism" the legislatures have prevented themselves from seeing that they were in fact dealing with conspiracy and solicitation. In their desire to make these activities punishable at a point where our criminal jurisprudence will not usually take cognizance of them, the legislatures have departed seriously from the spirit of our laws and institutions. The provisions whereby anyone is a felon who has in his possession printed matter which suggests the doctrine that economic or political ends be brought about by sabotage,<sup>14</sup> or who voluntarily participates by his presence, aid, or instigation in an assembly where these doctrines are advocated;<sup>15</sup> or who openly or at all attempts to justify these doctrines with the intent to suggest "criminal syndicalism";<sup>16</sup>—such provisions carry one back sharply to the day when it was high treason to "wish, will or desire . . . harm to the King's most royal person",<sup>17</sup> and when it was an offense calling for deportation to be a member of a labor union.<sup>18</sup>

The construction put upon the Espionage Act, with its cognate provision punishing "whoever shall willfully advocate, teach, defend or suggest"<sup>19</sup> the wrongful acts enumerated, gives us an indication of the interpretation which the courts will place upon the "criminal syndicalism" laws.<sup>20</sup> Accepting in the one instance as in the other the test that the circumstances and nature of the words or acts to be punished must be such as to create a clear and present danger that they will bring about the substantive evils which the legislatures have a right to prevent,<sup>21</sup> we may nevertheless expect the courts to overstep such limits in many instances.<sup>22</sup>

<sup>14</sup>South Dakota Laws, 1918 (special session) c. 38 § 2, imposing a penalty of twenty-five years imprisonment.

<sup>15</sup>Idaho, Laws 1917 c. 145; Montana, Laws 1918 (special session) c. 7 § 4; and other states.

<sup>16</sup>Oregon, Laws 1919, c. 12 § 3; Oklahoma, Laws 1919, c. 70; and other states.

<sup>17</sup>26 Hen. VIII (1534) c. 13.

<sup>18</sup>The Conviction of the Dorchester Labourers, *The (London) Times*, March 20, 1834. The indictment was framed on 37 Geo. III (1797) c. 123, against seditious and illegal conspiracies.

<sup>19</sup>(1917) 40 Stat. 217, 219 as amended (1918) 40 Stat. 553.

<sup>20</sup>*Abrams v. United States* (1919) 40 Sup. Ct. 17. See Chafee, *Freedom of Speech in War Time*, 32 *Harvard Law Rev.* 932. None of the "criminal syndicalism" laws is limited in any way with respect to the war.

<sup>21</sup>*Per Holmes, J. in Schenck v. United States* (1919) 249 U. S. 47, 52, 39 Sup. Ct. 247.

<sup>22</sup>Thus in the first conviction under the Minnesota Act (in which the constitutionality of the Act was upheld) the basis of the indictment was a set of posters two inches square bearing such legends as "Beware Good Pay Bum Work: The I. W. W. Never Forget: Sabotage", "Industrial Unionism: Abolition of the Wage System: Join the I. W. W. for Freedom", "The I. W. W. are Coming: Join the One Big Union", stuck on various buildings by the defendant. No evidence was offered but the

"The I. W. W. has importance only as an illustration of a stable American economic process".<sup>23</sup> The energy expended by the legislatures upon a body which brings together twenty-five delegates in its annual convention,<sup>24</sup> and in the fifteen years of its existence has never claimed 80,000 members,<sup>25</sup> seems sadly misdirected. The larger problem of the 600,000 migratory laborers of the country,—the majority of whom are lumbering, harvesting, and fruit-picking in the states which have enacted "criminal syndicalism" laws,—cannot be solved by the present approach. The legislature may vent its excitement by jailing men for twenty-five years;<sup>26</sup> but it must set itself to the more drab task of eliminating the causes which lead men to desire violence as "a means of accomplishing political or industrial ends".

BUDGET LEGISLATION.—As a result of the cumulative effect of popular pressure<sup>1</sup> some eleven so-called budget bills have recently been presented to Congress, and congressional attention is now being definitely focused upon two of them.<sup>2</sup> In the consideration of these bills Congress has at its disposal a vast amount of precedent, since almost all foreign countries have in force some variety of the budget system,<sup>3</sup> and most

posters themselves. *State v. Moilen*, *supra*, footnote 13. The Acts are so recent that no other cases have reached courts of record.

<sup>23</sup>Carleton Parker, *The I. W. W.* (1917) 120 *Atlantic Monthly*, 651, 662.

<sup>24</sup>1912: 45 delegates, 1913: 37, 1914: 25, 1915: 25. Brissenden, *The I. W. W.*, 295, 303, 325, 338.

<sup>25</sup>These figures, impossible of accurate ascertainment, are analyzed by Brissenden, *op. cit.*, Appendix IV.

<sup>26</sup>"And we must not lose sight of the fact that the great danger in enacting statutes under the stress of great public excitement and pressure is that such legislation is very apt to reflect the crude and undigested sentiment of a public upheaval at the cost of encroachment on constitutional rights". Kalisch, J., in acquitting an inflammatory strike orator of a charge of criminal anarchy (*N. J. Comp. St. p. 1744*): *State v. Scott* (1914) 86 *N. J. L.* 133, 90 *Atl.* 235.

<sup>1</sup>President Taft's message to Congress on January 17, 1912, and the Report of President's Commission on Economy and Efficiency on "The Need for a National Budget" presented to Congress June 27, 1912, were among the first important official recognitions of the public insistence for administrative economy. In 1916 all the major political parties pledged themselves in their platforms to the adoption of a budget system.

<sup>2</sup>The so-called McCormick Bill (S. 3476) which has been read twice and referred to the Committee on Consideration of a National Budget System, and the so-called Good Bill (H. R. 9783) which has passed the House of Representatives by a vote of 283 to 3.

<sup>3</sup>"The United States is the only great Nation whose government is operated without a budget", President Taft's message to Congress on January 17, 1912. A recent list of the countries using some form of the budget system, compiled by the National Budget Committee (a District of Columbia Corporation) includes Argentine, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, France, Germany, Great Britain, Greece, Guatemala, Honduras, Hungary, Italy, Japan, Liberia, Luxembourg, Mexico, Montenegro, Netherlands, Newfoundland, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Union of South Africa, Uruguay, Venezuela.